Gates Rubber Company and its workers compensation insurance carriers, National Union Fire Insurance and Planet Insurance Company (jointly referred to as "Gates") ask the Utah Labor Commission to review Administrative Law Judge George's conclusion that Gates is solely liable for benefits awarded to L. M. under the Utah Occupational Disease Act ("the Act"; Title 34A, Chapter 3, Utah Code Ann.).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §34A-3-102(2), Utah Code Ann. §34A-2-801(3) and Utah Admin. Code R602-2-1.M.

BACKGROUND AND ISSUE PRESENTED

While working for Gates, Mrs. M. developed carpal tunnel syndrome. She then changed jobs and began working for Vendworx, where her carpal tunnel syndrome continued. Judge George concluded that all of Mrs. M.' carpal tunnel syndrome was attributable to her work at Gates and ordered Gates to pay all Mrs. M.'s occupational disease benefits.

In seeking Commission review of Judge George's decision, Gates argues that liability for Mrs. M.'s benefits should be apportioned between Gates and Vendworx.

FINDINGS OF FACT

The Commission adopts Judge George's findings of fact. As material to the issue now before the Commission, the facts can be summarized as follows.

Mrs. M. worked for Gates between March 1994 and March 1998. Her work at Gates always required a significant amount of data entry, which involved repetitive hand motions. By 1995, she had developed bilateral carpal tunnel syndrome as a result of her work duties. She underwent surgery during 1995, but by 1997 she was once again experiencing carpal tunnel symptoms.

After Mrs. M. left Gates in March 1998, she worked at Vendworx until October 1999. Her duties at Vendworx were varied and did not require repetitive hand motions. Nevertheless, the carpal tunnel symptoms she first experienced at Gates continued.

The preponderance of medical evidence, including the report of the impartial medical panel, establishes that Mrs. M.'s work at Gates caused her carpal tunnel syndrome. There is no significant medical evidence of any causal connection between Mrs. M.'s duties at Vendworx and her carpal tunnel syndrome.

DISCUSSION AND CONCLUSION OF LAW

Both Gates and Vendworx concede Mrs. M. is entitled to occupational disease benefits. The only issue is whether those benefits should be apportioned between the two employers or are the sole

responsibility of Gates. This issue is controlled by §34A-3-105 of the Utah Occupational Disease Act, which provides as follows:

> (1) To the extent compensation is payable under this chapter for an occupational disease which arises out of and in the course of an employee's employment for more than one employer, the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazards of the disease if:
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> > (a) the employee's exposure in the course of employment with that employer was a substantial contributing medical cause of the alleged occupational disease; and
> >
> > (b) the employee was employed by that employer for at least 12 consecutive months.
>
> (2) Should the conditions of Subsection (1) not be met, liability for disability, death, and medical benefits shall be apportioned between employers based on the involved employer's causal contribution to the occupational disease.

As a threshold matter, §105's entire scheme for apportionment of liability is predicated on the existence of a disease that "arises out of" employment for two or more employers. For a disease to "arise out of" employment, there must be a medical causal connection between the work and the disease. Here, there is no question of a medical causal connection between Mrs. M.'s work at Gates and her carpal tunnel syndrome. However, there is no similar medical evidence of a causal connection between Mrs. M.'s work at Vendworx and her carpal tunnel syndrome. The medical panel's report, when taken in context and as a whole, attributes Mrs. M.'s carpal tunnel syndrome entirely to Gates. Because Mrs. M.'s claim entirely arises out of her employment at Gates, there is no need to apply §105's apportionment provisions.

ORDER

The Commission affirms Judge George's decision and denies Gates' motion for review. It is so ordered.

Dated this 3rd day of September, 2003.

R. Lee Ellertson, Commissioner